HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

and
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.A.NOs.235 AND 237OF 2006

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W.A.No.235 of 2006

Between:

State of Andhra Pradesh rep by its Secretary,

Minorities Welfare (M&R) Department,

Secretariat, Hyderabad and 3 others.

..... Petitioner

AND

Margadarshi College of Education,

Shangapuram,Mahaboobabad,

Warangal District rep by its Secretary

T.Rajendra Kumar.

.....Respondent

Counsel for the Petitioner : Sri C.V. Mohan Reddy,

Advocate General, assisted by

Government Pleader for School

Education and Special Government

Pleader.

Counsel for Respondent : Sri Nooty Ram Mohan Rao

W.A.No.237 of 2006

Between:

State of Andhra Pradesh rep by its Secretary,

Minorities Welfare (M&R) Department,

Secretariat, Hyderabad and 3 others.

..... Petitioner

AND

Elim College of Education,

Jankipet St., Amalapuram,

East Godvari District rep by its Secretarty

R.Ratna Raju and another.

.....Respondents

::COMMON JUDGMENT::

Counsel for the Petitioner : Sri C.V. Mohan Reddy,

Advocate General, assisted by

Government Pleader for School

Education and Special

Government Pleader.

Counsel for Respondent No. 1 :Sri D.Prakash Reddy, Senior

Advocate assisted by Sri

G.Elisha

Counsel for Respondent No. 2 :Sri C.Sudesh Anand SC for

APSCHE

Dated 8/3/2006

Per Sri G.S.Singhvi, CJ

These appeals are directed against order dated 3.3.2006 passed by the learned Single Judge in WPMP Nos.5158 of 2006 (WP No.4126 of 2006) and 5216 of 2006 (WP No.4168 of 2006) whereby, he while fixing the miscellaneous petitions after two weeks passed the following order.

> " Pending examination of the various important issues in detail, and in view of the urgency in the matter, I deem it appropriate to issue the following directions by way of interim arrangement, pending further orders.
>
> 1. The petitioner-institutions shall admit the candidates who are allotted, if any, in the counseling held on 2.3.2006, pursuant to the program schedule issued by the Convenor, EDCET-2005, and allow them to prosecute studies.
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> 2. The Convenor, EDCET-2005 shall not allot any students to the petitioner-institutions for a period of two weeks from today and up to 17.3.2006.
>
> 3. It is open for the petitioner-institutions to admit eligible and qualified students belonging to the respective minorities to the extent of 85% of the intake capacity, on or before 17.3.2006.
>
> 4. It is also open for the petitioner-institutions to fill up the seats of 15% of the intake capacity from the management quota by admitting the students, either belonging to minority or non-minority. After admission of students belonging to minority, the petitioner-institutions shall furnish the list of such minority students admitted under 85% of the intake capacity of the institution, and

also the candidates admitted under 15% of the Management Quota, to the Convenor, EDCET-2005. The said list shall be submitted in person in the office of the Convenor, on or before 20.3.2006.

5. After furnishing the list of admitted candidates of respective minorities, the petitioner-institutions shall not make any further admissions. On furnishing the list, it is open for the Convenor to allot the students in the seats that were unfilled from 85% of the minority quota and also in the seats that were unfilled from 15% of the Management Quota. On such allotment, the petitioner institutions shall admit the students allotted by the Convenor, EDCET-2005. In case, the list of admitted candidates from minority quota is not furnished by any of the petitioner-institutions as indicated above within the time frame, it is open for the Convenor to allot the candidates to the entire extent of 85% of the intake capacity. On such allotment, the petitioner-institutions shall admit such students and allow them to prosecute studies."

In the main writ petitions, which are pending adjudication before the learned Single Judge, the respondents have questioned the legality of show cause notice dated 7.2.2006 and orders dated 25.2.2006 and 27.2.2006 issued by the Principal Secretary to Government (I/C) Minorities Welfare (M&R) Department in the matter of withdrawal of the minority status/non-renewal of minority status of the institutions. The writ petitioners have challenged the action taken by the State Government mainly on the ground that the same is violative of their fundamental right guaranteed under Article 30(1) of the Constitution of India and is ultra vires to the policy framed by the State Government for grant of minority status. Another plea taken by the writ petitioners is that the impugned action is wholly arbitrary, irrational and unjustified. According to them, the State Government could not have withdrawn their minority status or refused to renew the said status only on the ground that during the year 2004-05, requisite number of minority candidates were not admitted. In the WPMPs filed along with the writ petitions, the petitioners (respondents herein) prayed for staying the operation of orders dated 25/27.2.2006 and for being allowed to make admissions of the minority candidates for the session 2005-06.

Although no counter could be filed on behalf of the non-petitioners in the writ

petitions (appellants herein) the learned Single Judge, keeping in view the urgency of the matter, heard the arguments on the prayer made by the petitioners for grant of interim relief and passed the order, which is subject matter of challenge in these appeals.

Learned Advocate General forcefully argued that without recording a finding that order dated 25/27.2.2006 suffer from any constitutional or legal infirmity and without suspending the operation of those orders, the learned Single Judge could not have indirectly restored the minority status of the writ petitioners by giving them liberty to make admissions of the students belonging to minority communities. He submitted that in the face of the action taken by the Government to withdraw the minority status of the writ petitioners or to refuse renewal of such status, the learned Single Judge ought not to have passed the order under challenge. He pointed out that one of the colleges had not admitted even a single candidate belonging to Christian minority in the year
2004-05 and the other college had admitted only 10 students of that category. Learned Advocate General also pointed out that as many as 4559 candidates belonging to Christian minority had qualified the Common Entrance Test, but only 1665 of them were admitted in the B.Ed course conducted by 75 Christian minority colleges. He further pointed out that out of 1665, 1036 Christian candidates were admitted in 9 Christian B.ED colleges and only 629 candidates were admitted in the remaining 66 Christian B.ED colleges including the writ petitioners and this is clearly indicative of the fact that the concerned colleges had filled up remaining seats in utter disregard of the policy framed by the Government for admission of the candidates in the minority institutions. Learned Advocate General submitted that the Court may stay the order of the learned Single Judge, else it would amount to conferring minority status on the writ petitioners by judicial fiat.

Learned counsel for the respondent-Colleges argued that the order passed by the learned Single Judge is essentially just and equitable and does not call for interference by the Division Bench. On the criticism of the learned Advocate General regarding tenor of the order under challenge, Sri D.Prakash Reddy, Senior Counsel invited our attention to paragraph 9 of the order and submitted that the very enumeration of several important issues which are required to be decided in the writ petitions is indicative of the satisfaction of the learned Single Judge that the petitioners have been able to make out a strong prima facie case. Sri Reddy also

criticized orders dated 25/27.2.2006 by arguing that the same are reflective of total non application of mind by the officer concerned to the reply filed by the petitioners to the show cause notice dated 7.2.2006. Sri D.Prakash Reddy and Sri Nuty Ram Mohan Rao emphasized that their respective clients could not admit adequate number of minority students because of the restriction imposed by the State government vide G.O.Ms.No.57 dated 21.3.2005. They further submitted that the Court may allow the institutions to make admissions strictly in accordance with the policy of the Government and this would not tantamount to restoring their status as minority institutions.

We have thoughtfully considered the respective arguments and perused the record. Ordinarily, the Division Bench will be extremely slow to interfere with the discretion exercised by the learned Single Judge in the matter of grant of interim relief and that too when such relief relates to admission in the educational institutions, but in the peculiar facts and circumstances of these cases and particularly the fact that the learned Single Judge has not thought it proper to suspend the operation of the orders dated 25/27.2.2006, we are inclined to entertain the appellants' challenge to the interim order.

At this stage, it is neither proper for the court nor it will be in the interest of either party to express any conclusive opinion on the merits and demerits of the writ petitioners challenge to orders dated 25/27.2.2006 because the main matters are pending adjudication before the learned single Judge, but we cannot refrain from observing that the manner in which the writ petitioners violated paragraph-6 of G.O.Ms.No. 1 dated 16.1.2004 did call for a severe scrutiny by the concerned authority and the make-shift explanations given by the institutions for their failure to admit even 20% minority candidates will definitely require deeper examination by the court before the same be treated as satisfactory and acceptable.

In our view, the learned single Judge should not have ignored the background in which orders dated 25/27.2.2006 were passed by the competent authority and given unrestricted liberty to the writ petitioners to admit minority candidates, more so when he did not feel inclined to suspend the operation of the orders impugned in the writ petition. At the same time, we feel that if some

arrangement is not made for admission of the minority candidates in the petitioner-institutions, their rights would be seriously jeopardized and final adjudication of the writ petitions may prove futile. In the facts and circumstances of the case, we feel that ends of justice will be met by directing that minority candidates be admitted in the respondent-institutions to the extent of the per centage prescribed in G.O.Ms.No. 1 dated 16.1.2004 through the Convener, EDCET 2005.

Hence, the appeals are disposed of in the following terms:

i. The order of the learned single Judge is set aside;

ii. The Convener, EDCET 2005 is directed to allot students belonging to minorities, Christian/Muslim, to the concerned minority institutions to the extent of per centage prescribed by G.O.Ms.No. 1 dated 16.1.2004. This exercise shall be undertaken and completed as per the schedule fixed by him;

iii. It will be open to the concerned minority institutions to fill up 15% of the management quota by admitting students of minority as well as non-minority communities. The list of such candidates shall be furnished to the Convener, EDCET 2005 within 15 days of the admissions.

It is, however, made clear that the order passed by us is an interim arrangement and will not create any right or disability on either of the parties and the learned single Judge shall be free to adjudicate the issues raised in the main writ petitions without being influenced by this order. It is also made clear that even if the writ petitions are ultimately dismissed, the rights of the candidates admitted in pursuance of this order shall not be adversely affected, in any manner, whatsoever.

G.S.SINGHVI, CJ

G. BHAVANI PRASAD, J

Msv/vtv/ams.